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The Work of the Louisiana Appellate Courts for the 1976-1977 Term

A Symposium

[*Editor's Note:* The articles in this symposium discuss selected decisions of Louisiana appellate courts reported in the advance sheets dated July 1, 1976 to July 1, 1977.]

STATISTICAL SURVEY

*David S. Clark**

The late Dean Paul M. Hebert, together with Professor Carlos E. Lazarus, opened the first faculty symposium on the 1937-1938 term of the Louisiana Supreme Court with a statistical survey of the court's caseload.¹ Recognizing the importance of judicial statistics, Dean Hebert later commented:

Unfortunately, one of the great needs in Louisiana is for a more comprehensive, accurate and regular collection of judicial statistics from our courts at all levels. It is to be hoped that such an enterprise will be undertaken in connection with the work of a well-organized judicial council. Such data are indispensable to the thorough consideration of the manner in which justice is administered under the law. They would be of interest and value to students of the judicial process. Information as to the volume of work performed in the courts at all levels would also be of invaluable assistance in any intelligent approach to the problems of judicial reorganization, reassignment of personnel of lower courts or redistribution of judicial work which are inevitably considered from time to time. Should a constitutional convention be called in Louisiana, a statistical analysis of the work loads of the entire judicial structure would be an important consideration in planning the geographical distribution of courts and in re-defining the jurisdiction of courts of first instance and appellate courts. Consideration of the appellate jurisdiction of the courts of appeal and the Supreme Court would be aided if a compre-

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1. *The Work of the Louisiana Supreme Court for the 1937-1938 Term*, 1 LA. L. REV. 314 (1939).

hensive analysis on jurisdictional grounds of the flow of judicial business were available.²

The judicial council which Dean Hebert hoped for was first adequately funded by the legislature in 1954³ and has done a commendable job in the collection and organization of information on the judicial process.⁴

This issue of the *Louisiana Law Review* returns to the practice of providing its readership with an overview of the appellate process in Louisiana.⁵ The recent growth in the Louisiana Supreme Court caseload, paralleling the expansion of filings in other American jurisdictions,⁶ is greater today than at any time in our history. During the past ten years, for instance, supreme court filings in Louisiana have advanced 250 percent—from 564 to 1,973 cases. In addition, the courts of appeal adjudicate 62 percent more filings, reflecting an increase from the 1,899 cases heard in 1967 to 3,085 cases in 1976.⁷ In response to this situation, Chief Justice Joe W. Sanders recently appointed a heterogeneous 45 person committee to explore alternative solutions for balancing the workloads of the supreme court and the courts of appeal.⁸

Table 1 reflects the dramatic increase in Louisiana Supreme Court filings and opinions rendered since 1972, both expanding by approximately 70 percent in five years.⁹

2. *The Work of the Louisiana Supreme Court for the 1952-1953 Term—Foreword*, 14 LA. L. REV. 62, 63 (1953).

3. The Judicial Council was created by the Louisiana Supreme Court in 1950. JUDICIAL COUNCIL OF THE SUPREME COURT OF LOUISIANA, ANNUAL REPORT 2, 6 (1955).

4. The Judicial Council has published an annual report with statistics since 1955.

5. The last statistical survey was written by Professor George W. Pugh and Jean H. Pugh in 1962. *The Work of the Louisiana Supreme Court for the 1960-1961 Term—Statistical Survey*, 22 LA. L. REV. 299 (1962).

6. Clark, *American Supreme Court Caseloads: A Preliminary Inquiry*, 25 AM. J. COMP. L. 217 (1978), in *LAW IN THE UNITED STATES OF AMERICA IN THE BICENTENNIAL ERA* (J. Hazard & W. Wagner eds. 1978).

7. These totals include original jurisdiction, appeals, writs, and rehearing applications. JUDICIAL COUNCIL OF THE SUPREME COURT OF LOUISIANA, ANNUAL REPORT 26, 30 (1976) [hereinafter cited as 1976 ANNUAL REPORT].

8. Justice Mack E. Barham, Retired, chairs the Special Committee to Study Appellate Court Caseloads and Procedures. 1976 ANNUAL REPORT, *supra* note 7, at 5.

9. The source for all tables in this survey, except for Table 2, is the annual reports of the Judicial Council of the Supreme Court of Louisiana Annual Report. The information for 1972 to 1974 was compiled for a fiscal year ending in the year listed, while data for 1975 and 1976 are for calendar years.

TABLE 1: VOLUME OF LOUISIANA SUPREME COURT BUSINESS, 1972-1976, BY TYPE OF CASE

Type of Case	1972	1973	1974	1975	1976
Filings (Total)	1167	1222	1433	1835	1973
Appeals	214	204	235	358	461
Writs	822	873	1014	1240	1278
Rehearings	123	139	175	229	212
Original Jurisdiction	8	6	9	8	22
Percent Filings Dismissed or Denied					
Appeals ^a	5	4	4	3	3
Writs	79	81	80	76	80
Rehearings	91	85	90	87	94
Opinions Rendered (Total)	291	347	404	514	512
Appeals ^b	191	229	240	354	331
Writs	91	106	152	146	145
Rehearings	6	8	9	7	28
Original Jurisdiction	3	4	3	7	8

a. The percentage for appeals is calculated by dividing the number of cases dismissed by the number of current annual filings. Since some of the dismissals will be from the preceding year's appeals, this percentage will slightly misstate the true percentage. The percentage for writs and rehearings is based on the number of cases actually considered during the year.

b. Includes per curiam affirmances without written opinions.

This caseload crisis and alternative available responses are discussed elsewhere.¹⁰ It is clear, however, that the number of opinions written cannot continue to expand without significant impact on the functions we have come to expect of supreme courts in the United States.¹¹ Table 2 shows that the Louisiana Supreme Court spends the great majority of its time considering criminal matters.

10. See Clark, *supra* note 6. Of the ten supreme courts examined, Louisiana had the largest number of majority written opinions. *Id.* at 225 table 5.

11. This is particularly true of the function of enunciating, clarifying and harmonizing the rules used within a legal system. See Clark, *supra* note 6, at 226-31.

TABLE 2: SUBJECT MATTER (IN PERCENTAGES) OF LOUISIANA SUPREME COURT WRITTEN OPINIONS IN 1976^a

<u>Subject Matter</u>	<u>Percentage</u>
Criminal Related Cases (n=350) ^b	100
Criminal Law	5
Juvenile Law	2
Prison Law ^c	3
Criminal Procedure ^d	69
Evidence ^e	21
Non-Criminal Cases (n=101) ^f	100
Family Law	6
Contracts	8
Insurance	9
Business Associations ^g	2
Torts	10
Workmen's Compensation	7
Wrongful Death	7
Property ^h	6
Security Devices	1
Successions	3
Administrative Law	6
Constitutional Law	10
State & Local Government	4
Elections	3
Legal Profession ⁱ	5
Taxes	2
Civil Procedure	12

a. The opinions classified in this table appear in volumes 325 to 344 of the *Southern Reporter* (2d) and were decided between January 1 and December 31, 1976. Classification is based on the principal issue discussed in each case. I wish to express my appreciation to Merrily T. Longacre, who compiled the statistics for this table.

b. This excludes 61 per curiam affirmances without written opinions.

c. These cases deal with the treatment of individuals in Louisiana jails and prisons.

d. 36 (of the 241) cases dealt with various degrees of incompetence on the part of a defendant's lawyer at trial or in perfecting appeal.

e. A few of the evidence cases are non-criminal.

f. The total percentage does not equal 100 due to rounding.

g. Includes agency, partnership and corporations cases.

h. Includes prescription, public lands and expropriation as well as private property rights.

i. Includes disciplinary action against lawyers and judges.

This growth in the caseload of the courts of appeal has been more modest, with only a 19 percent increase in the number of judgments rendered since 1972.

TABLE 3: VOLUME OF BUSINESS IN LOUISIANA COURTS OF APPEAL, 1972-1976,
BY CIRCUIT AND TYPE OF CASE

Type of Case	1972	1973	1974	1975	1976
Filings (Total)	2393	2299	2264	2762	3085
Appeals	1573	1429	1407	1812	1947
First Circuit	436	458	388	464	429
Second Circuit	267	224	252	282	328
Third Circuit	352	333	339	434	484
Fourth Circuit	518	414	428	632	706
Writs	140	160	172	208	242
First Circuit	36	48	40	49	48
Second Circuit	19	17	23	31	25
Third Circuit	25	17	28	25	47
Fourth Circuit	60	78	81	103	122
Rehearings	680	710	685	742	896
First Circuit	234	248	174	202	233
Second Circuit	92	98	80	80	147
Third Circuit	183	165	194	213	245
Fourth Circuit	171	199	237	247	271
Percent Filings Dismissed or Denied					
Appeals ^a					
First Circuit	13	6	14	8	8
Second Circuit	3	4	8	5	4
Third Circuit	5	4	4	5	8
Fourth Circuit	4	9	11	10	13
Writs					
First Circuit	80	79	91	86	82
Second Circuit	89	76	65	87	88
Third Circuit	75	94	88	95	89
Fourth Circuit	86	72	73	60	70
Judgments Rendered (Total)	1367	1374	1458	1505	1627
First Circuit	394	457	391	362	458
Second Circuit	220	230	189	263	282
Third Circuit	372	326	344	423	397
Fourth Circuit	381	361	534	457	490
Average Delay (in Years) ^b					
First Circuit	.16	.16	.16	.31	.23
Second Circuit	.19	.15	.44	.17	.25
Third Circuit	.14	.18	.15	.15	.22
Fourth Circuit	.82	.59	.20	.43	.48

a. The percentage for appeals is calculated by dividing the number of cases dismissed by the number of current annual filings. This percentage slightly misstates the true percentage since some dismissals result from the preceding year's

appeals. The percentage for writs is based on the number of cases actually considered during the year.

b. Average delay is estimated by the duration of litigation index, $P_{t+1} \div P_t + F - P_{t+1}$, where P_t = the number of cases pending at the beginning of the year, P_{t+1} = the number of cases pending at the end of the year, and F = the number of cases filed during the year. For an explanation of the derivation of this index, see Clark & Merryman, *Measuring the Duration of Judicial and Administrative Proceedings*, 75 MICH. L. REV. 89 (1976).

Nevertheless, filings expanded by 29 percent, leading to greater average delay in three of the four circuits by 1976.¹²

The four tables which follow illustrate the base of the Louisiana caseload pyramid. It is here that the life blood and emotion of the judicial system flow. We know much less about this level of the hierarchy than about the apex; yet in many respects the bottom is more important. It is in the trial courts that most citizens (and most lawyers as well) come into contact with our judicial machinery. Justice at the bottom is generally the only justice that is known.

TABLE 4: VOLUME OF BUSINESS FILED IN LOUISIANA FIRST INSTANCE COURTS, 1972-1976, BY TYPE OF COURT AND TYPE OF CASE

Type of Court	1972	1973	1974	1975	1976 ^c
District Courts					
(Total) ^a	282,565	304,864	330,967	361,754	
Civil Cases	102,995	110,921	123,696	129,317	
Criminal Cases	179,570	193,943	207,271	232,437	
City & Parish					
Courts (Total)	475,615	470,159	480,881	517,939	564,753
Civil Cases	41,065	48,366	52,482	57,519	59,537
Criminal Cases	120,964	86,610	91,879	109,804	112,158
Traffic Cases	299,135	323,163	322,233	336,898	381,044
Juvenile Cases	14,451	12,020	14,287	13,718	12,014
All First Instance					
Courts ^b	758,180	775,023	811,848	879,693	

a. Includes civil and criminal cases filed in family and juvenile courts.

b. The true totals are slightly larger since a few clerks of court still fail to provide statistical information.

c. Complete data are not available for the district courts in 1976.

Table 4 reveals that in 1975, 879,693 cases were filed in Louisiana district, city, and parish courts. We can appreciate the winnowing process by referring to the 1,835 cases filed in the supreme court during that same year.¹³ Of course, 38 percent of these first instance cases were mere traffic

12. The figures for delay are an average for appeals, writs and rehearings.

13. See Table 1.

offenses, but on the other hand, 62 percent dealt with matters of some moment. Table 5 presents a subject matter breakdown for district courts in 1976.

TABLE 5: SUBJECT MATTER (IN PERCENTAGES) OF CASES FILED IN
LOUISIANA DISTRICT COURTS IN 1976

<u>Subject Matter</u>		<u>Percentage^b</u>
Civil (Total)		100
Family ^a		26
Contract		27
Automobile Torts		9
Other Torts		5
Workmen's Compensation		4
Property Rights		2
Succession		9
Other		18
Adult Criminal (Total)		100
Felony (Total)	100	28
Homicide	4	
Rape	1	
Assault & Battery	5	
Burglary	22	
Robbery & Extortion	6	
Theft	28	
Drugs	15	
Other	19	
Misdemeanors (Total)	100	72
Assault & Battery	8	
Theft	19	
Driving	25	
Non-Support ^a	11	
Drugs	9	
Other	28	
Juvenile (Total)		100
Delinquency		53
Supervision & Care		8
Other		39

a. In some districts, these cases are heard by the juvenile or family courts.

b. These percentages are based on partial data.

Table 6 shows that some types of cases take significantly longer to litigate than other types. For example, tort cases require twice as much time to process as the next slowest class of civil action, whether a trial is set or not.

TABLE 6: MEDIAN DELAY (IN DAYS) FOR CASES TERMINATED IN LOUISIANA DISTRICT COURTS IN 1976, BY SUBJECT MATTER AND METHOD OF DISPOSITION

<u>Subject Matter</u>	<u>Cases Set For Trial</u>	<u>Cases Disposed Without Setting Trial</u>
Civil (Total)	58	37
Family	49	40
Contract	64	53
Automobile Torts	271	113
Other Torts	271	88
Workmen's Compensation	135	17
Property Rights	135	47
Succession	19	17
Criminal		
Felony (Total)	99	66
Homicide	115	132
Rape	110	273
Assault & Battery	104	95
Burglary	87	56
Robbery & Extortion	97	86
Theft	94	57
Drugs	124	97
Misdemeanors (Total)	55	20
Assault & Battery	57	26
Theft	60	21
Driving	58	18
Non-Support	52	83
Drugs	57	24

Finally, one reason few cases reach the appellate levels stems from the situation reflected in Tables 7 and 8. Only a small percentage of the cases filed in district courts, for instance, reach trial. In 1976, ten percent of the civil cases were tried, while nine percent of the felonies and twelve percent of the misdemeanors went to trial.

Nevertheless, nine to twelve percent of an increasing number of first instance filings¹⁴ still present the appellate courts of Louisiana with a growing base from which most appeals originate. A solution to the

14. See Table 4.

appellate caseload problem, consequently, demands greater understanding of the total judicial process. The statistical survey, in a modest way, reinitiates the efforts of the *Louisiana Law Review* in the search for such solutions.

TABLE 7: CIVIL CASES TERMINATED (IN PERCENTAGES) IN LOUISIANA DISTRICT COURTS IN 1976, BY SUBJECT MATTER AND METHOD OF DISPOSITION^a

Subject Matter	Default	Pre-Trial Ruling	Settlement	Other ^b	Trial
All Civil Cases	42	21	9	17	10
Family	56	12	3	9	21
Contract	61	28	4	4	4
Automobile Tort	12	54	24	1	9
Other Torts	8	46	34	2	9
Workmen's Compensation	1	11	64	21	3
Property Rights	18	37	9	5	31
Succession	2	18	5	75	0

a. The percentages in a row may not total 100 due to rounding.

b. Includes uncontested cases, declaratory judgments, and other miscellaneous dispositions.

TABLE 8: CRIMINAL CASES TERMINATED (IN PERCENTAGES) IN LOUISIANA DISTRICT COURTS IN 1976, BY SUBJECT MATTER AND METHOD OF DISPOSITION^a

Subject Matter	Pre-Conviction Disposition ^b	Guilty Plea	Trial
All Felonies	31	59	9
Homicide	36	46	18
Rape	43	35	23
Assault & Battery	41	45	13
Burglary	26	68	6
Robbery & Extortion	20	64	16
Theft	32	61	6
Drugs	39	52	9
All Misdemeanors	27	61	12
Assault & Battery	43	45	12
Theft	26	68	5
Driving	14	82	3
Non-Support	40	11	49
Drugs	22	66	11

a. The percentages in a row may not total 100 due to rounding.

b. Includes nolle prosequi and dismissal by the court, as well as cases classified "other" and disposed of by failure to proceed due to absence or unwillingness of a key witness.